

THE HONORABLE JAMES L. ROBART

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

BRADY EDMONDS, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

AMAZON.COM, INC., a Foreign for Profit
Corporation; **AMAZON LOGISTICS, INC.**, a
Foreign for Profit Corporation;
AMAZON.COM SERVICES, INC., a Foreign
for Profit Corporation;

Defendants.

Case No. No. 2:19-cv-01613-JLR

**DECLARATION OF SARAH R.
SCHALMAN-BERGEN IN SUPPORT OF
MOTION TO INTERVENE AND FOR
LEAVE TO FILE MOTION TO DISMISS,
OR, IN THE ALTERNATIVE, TRANSFER**

**DECLARATION OF SARAH SCHALMAN-BERGEN IN SUPPORT OF
MOTION TO INTERVENE AND FOR LEAVE TO FILE MOTION TO DISMISS, OR, IN
THE ALTERNATIVE, TO TRANSFER THE EDMONDS MATTER**

I, SARAH SCHALMAN-BERGEN, have personal knowledge of the facts stated in this declaration and would testify to those facts if called upon to do so.

1. I am a member in good standing of the bar of the Commonwealth of Pennsylvania, and I am seeking *pro hac vice* admission to this Court. I am a shareholder at Berger Montague PC (“Berger Montague”) and, along with Willig, Williams & Davidson (collectively, “Proposed Intervenor’s Counsel”), represent Proposed Intervenor’s Counsel Andrea Thomas and Felicia Gaines.

2. Berger Montague specializes in class action litigation in federal and state courts and is one of the preeminent class action law firms in the United States.

3. I am co-Chair of Berger Montague’s Employment and Unpaid Wages Department and I have an extensive background in litigation on behalf of employees. I am currently serving as lead or co-lead counsel in dozens of wage and hour class and collective actions in federal courts across the country, including six actions on behalf of Amazon Delivery Associates filed in federal court, four of which have resolved on a class and/or collective-wide basis.

4. I respectfully submit this declaration in support of the Motion to Intervene and for Leave to File Motion to Dismiss, or, in the alternative, Transfer. The following is based on my personal knowledge, and if called upon to do so, I could and would competently testify thereto.

Relevant Background

5. Proposed Intervenor’s Counsel have zealously represented Delivery Associates (“DAs”) in actions against Amazon and Delivery Service Providers (“DSPs”) for asserted wage violations since 2017.

6. Proposed Intervenor’s Counsel have been retained by numerous DAs who performed work for other DSPs and Amazon across the country.

7. Proposed Intervenor’s Counsel is vigorously pursuing relief on behalf of these DAs and the classes and collectives they seek to represent, both in six cases in federal court as well as in numerous cases where they are engaged in confidential pre-filing discussions that include tolling

1 agreements with Amazon as part of an alternative dispute resolution process (“Pre-Filing Mediation
2 Process”).

3 8. Four of these actions have resolved on a class and/or collective-wide basis and are in
4 the process of being finalized or approved by the Courts in which they were filed.

5 9. The approach undertaken by Proposed Intervenor’s Counsel through their filed actions
6 and Pre-Filing Mediation Process includes substantial investigation and analysis of data and focuses
7 on the pay schemes and breadth of federal and state law wage violations at issue with respect to the
8 DSPs.

9 **First Filed *On the Go* Action**

10 10. One of these actions was filed by Ms. Felicia Gaines on January 31, 2019, against
11 Amazon and DSP On the Go Express, LLC (“On the Go”) as joint employers. *See Gaines v.*
12 *Amazon.com, LLC, et al.*, No. 1:19-cv-00528 (N.D. Ga.) (ECF No. 1 at ¶ 16.) (“First Filed *On the Go*
13 Action”). Attached hereto as Exhibit 1 is a true and correct copy of the Complaint in the First Filed
14 On the Go Action.

15 11. The parties in First Filed *On the Go* Action agreed to engage in an alternative dispute
16 process, which involved substantial exchange of documents, information, and data, and detailed
17 analyses of the data by Proposed Intervenor’s Counsel’s in-house Damages Analyst, to permit the
18 Parties to participate in meaningful, informed settlement discussions, and numerous meet and confer
19 sessions.

20 12. Investigation and analysis of On the Go’s payroll information during the course of
21 litigation and through the structured ADR process engaged in by the parties revealed that On the Go
22 did pay overtime in addition to a day rate in certain circumstances. Plaintiff Gaines maintained that
23 On the Go did not track all time worked.

24 13. On March 13, 2019, the parties in the First Filed *On the Go* Action participated in a full
25 day in-person mediation before the Honorable Walter E. Johnson, U.S. Magistrate Judge. The parties
26 reached a settlement in principle on behalf of Ms. Gaines and a collective of Plaintiff, Opt-In Plaintiffs,
27 and all current and former Delivery Associates who were paid by On the Go to deliver packages to

1 customers of Amazon.com in the United States between June 17, 2018 and January 26, 2019, which is
2 in the process of being submitted for court approval.

3 14. The settlement reached by the parties reflects Plaintiff's analysis and allegations that
4 On the Go did not track all hours worked.

5 **First Filed *JSTC* Action**

6 15. On August 16, 2019, Proposed Intervenor Andrea Thomas, represented by Proposed
7 Intervenor's Counsel, filed an action in the United States District Court for the Middle District of
8 Florida against JSTC LLC, alleging that she and a collective of similarly situated DAs were paid a day
9 rate without overtime, in violation of the FLSA. *Thomas v. JSTC, LLC et al.*, No. 6:19-cv-01528-RBD-
10 GJK (M.D. Fla.) ("First Filed *JSTC* Action"). A true and correct copy of the Complaint filed in the
11 First Filed *JSTC* Action is attached hereto as Exhibit 2.

12 16. Proposed Intervenor's Counsel engaged in pre-litigation discussions with Amazon, and
13 entered into a tolling agreement with Amazon for the benefit of the collective of workers who were
14 paid by JSTC for the purpose of engaging in an alternative dispute resolution process for the wage
15 violations alleged.

16 17. Because of this tolling agreement, the First Filed *JSTC* Action does not name Amazon
17 as a party defendant.

18 18. Following initial Court-Ordered discovery in the First Filed *JSTC* Action, Plaintiff
19 Thomas filed a First Amended Complaint asserting claims against Commercial Express, Inc. – the DSP
20 that subcontracted with JSTC – as well its other subcontractors: COEI, LLC, JSTC, LLC, AG Plus
21 Express, LLC, and Drop-A-Box, Inc. A true and correct copy of the First Amended Complaint filed
22 in the First Filed *JSTC* Action is attached hereto as Exhibit 3.

23 19. The parties in the First Filed *JSTC* Action, including Amazon, are currently engaged in
24 an alternative dispute resolution process that involves the exchange of data, documents, information,
25 and then mediation before an experienced mediator.

26 20. Indeed, the parties in the First Filed *JSTC* Action have spent significant time exchanging
27 data and discussing potential settlement of the matter, both pursuant to the Middle District of Florida's

1 local rules and Court Order (*see* First Filed *JSTC* Action at Dkt. No. 23), and through a structured ADR
2 process.

3 21. These efforts include, *inter alia*, (i) the exchange of data and information between JSTC
4 and Intervenor Thomas; (ii) Ms. Thomas' filing of answers to the Court's Interrogatories, which
5 included detailed information concerning her employment, compensation, and claims (*see* First Filed
6 *JSTC* Action at Dkt. No. 24); (iii) a Court-ordered in-person meeting between counsel for Ms. Thomas
7 and counsel for JSTC in Florida on December 4, 2019; (iv) numerous, ongoing meet and confer
8 telephone calls and settlement negotiations over a period of nine months between Ms. Thomas and
9 JSTC; (v) the provision of "Rabbit" data by Amazon; and (vi) the scheduling of mediation of all parties,
10 including Amazon, for October 15, 2020 with an experienced wage and hour mediator for purposes of
11 reaching a collective-wide resolution of Ms. Thomas' claims as alleged.

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13 DATED: May 28, 2020

Respectfully submitted,

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By: _____

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